

**WRITTEN STATEMENT FROM  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE  
ON THE  
LEGISLATIVE HEARING ON HR 7408 BEFORE THE  
SUBCOMMITTEE ON WATER, WILDLIFE, AND FISHERIES  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

The National Oceanic and Atmospheric Administration (NOAA) is responsible for the stewardship of the nation's living marine resources and their habitat. Backed by sound science and an ecosystem-based approach to management, NOAA Fisheries provides vital services for the nation, including sustainable management of our fisheries, ensuring safe sources of seafood, and the recovery and conservation of protected species and healthy ecosystems. The resilience of our marine ecosystems and coastal communities depends on healthy marine species, including protected species such as whales, sea turtles, salmon, and corals.

**The Endangered Species Act**

Under the Endangered Species Act (ESA), NOAA Fisheries works to recover marine and anadromous species while preserving robust economic and recreational opportunities. There are more than 160 endangered and threatened marine and anadromous species under NOAA's jurisdiction. Our work includes listing species under the ESA, monitoring species status, designating critical habitat, implementing actions to recover endangered and threatened species, consulting with other Federal agencies to insure their activities are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat, developing ESA policies, guidance, and regulations, and working with partners to conserve and recover listed species. NOAA Fisheries shares the responsibility of implementing the ESA with the U.S. Fish and Wildlife Service (hereafter referred to as the Services).

Recognizing the value of our natural heritage, Congress enacted the ESA nearly unanimously in 1973, in acknowledgement of the broad public support for the prevention of species extinction and the conservation of ecosystems and biodiversity. The ESA is the nation's foremost conservation law for protecting wildlife and plants in danger of extinction. It plays a critical, science-based role in preventing the extinction of imperiled species, promoting their recovery, and conserving their habitats. It has been extraordinarily effective at preventing species from going extinct and has inspired voluntary action to conserve at-risk species and their habitat before they reach the point where they would qualify to be listed as threatened or endangered.

Since it was signed into law, more than 99 percent of the species listed have been saved from extinction.

We offer the following comments on HR 7408.

### **HR 7408 - America's Wildlife Habitat Conservation Act**

HR 7408 would amend the Pittman-Robertson Wildlife Restoration Act to authorize supplemental funds for management of fish and wildlife species to States and Tribes. It would authorize the Department of the Interior to allocate these funds to accounts established under the Pittman-Robertson Wildlife Restoration Act and to issue grants. Because NOAA Fisheries does not provide or receive funds under the Pittman-Robertson Wildlife Restoration Act, this part of the legislation does not pertain to NOAA Fisheries.

HR 7408 would also amend several provisions of the ESA including provisions pertaining to listing species, designating critical habitat, and promulgating protective regulations under section 4(d) for threatened species. NOAA has several concerns with these provisions and opposes these sections of HR7408.

#### **Listing Determinations [Section 401]**

HR 7408 would amend the ESA to require the Services, when determining whether to list a species, to take into account the net conservation benefit of any "Candidate Conservation Agreement with Assurances" or "Programmatic Candidate Conservation Agreement with Assurances" for that species. Candidate Conservation Agreements with Assurances are voluntary agreements that are used to provide incentives for non-Federal landowners to conserve candidate and other unlisted species. The Services currently enter into these agreements when we determine that the conservation measures that will be implemented address key current and anticipated future threats that are under the property owner's control and will result in a net conservation benefit to, and improve the status of, the covered species.

This bill's definition of "net conservation benefit" differs from that in the 2016 joint NOAA Fisheries and U.S. Fish and Wildlife Service candidate conservation agreement with assurances policy (81 FR 95164). The policy provides a clear definition of the term "net conservation benefit" that specifically refers to cumulative benefits of the conservation measures and describes how the benefits are measured. Consistent with the policy's definition, the conservation measures and property-management activities covered by the agreement must be designed to reduce or eliminate those key threats on the property that are under the property owner's control in order to increase the species' populations or improve its habitat. HR 7408 defines "net conservation benefit" as the net effect of the agreement by comparing the situation of the

candidate species with and without an agreement, rather than the cumulative benefits to the species referenced in the policy. As such, the bill would allow for exemption from future listing based on a lower standard than currently applicable, undermining the ability of the ESA to prevent extinction. In addition, it is not clear how the requirement to take into account the net conservation benefit of any “Candidate Conservation Agreement with Assurances” or “Programmatic Candidate Conservation Agreement with Assurances” would apply to NOAA Fisheries, as various subsections of the bill establish responsibilities for the “Secretary” – a term that includes both Services – and the Director of the U.S. Fish and Wildlife Service, which would exclude NOAA Fisheries from the bill’s application.

### **Critical Habitat [Sections 402]**

Existing section 4(a)(3)(B)(i) of the ESA precludes the Secretary from designating as critical habitat lands or geographical areas owned or controlled by the Department of Defense that are subject to an integrated natural resources management plan prepared under the Sikes Act, if the Secretary determines that the plan provides a benefit to the species. Section 402 of HR 7408 would prohibit the Services from designating as critical habitat lands that are privately owned or controlled, and that are subject to a land management plan that the Secretary determines is similar to an integrated natural resource management plan under Section 101 of the Sikes Act. Privately controlled land is not defined.

While some of this provision in HR 7408 is similar to Section 4(a)(3)(B)(i) of the ESA, HR 7408 includes additional requirements and findings that would be very difficult to produce within the timeframes the ESA requires for critical habitat to be designated. For example, section 402 provides that one way for a land management plan to be prepared is in cooperation with the Services and each applicable State fish and wildlife agency. The resource-intensive task of preparing and assessing potentially multiple plans in multiple states for wide-ranging species would strain the Services’ limited resources, and cause delay. Even if land management plans are prepared independently of a multi-agency cooperative process, assessing plans that are otherwise developed and submitted to the Services would also be time-consuming and resource-intensive. In assessing those plans, the Services would be required by this bill to determine, among other things, whether the plan would result in an increase in the population of the species or would maintain the same population as the population that would likely occur if such land or other geographical area were designated as critical habitat. Such an analysis would be difficult to conduct.

### **Forest Service and Bureau of Land Management Plans [Section 501]**

HR 7408 would revise the Forest and Rangeland Renewable Resources and Planning Act and the Federal Land Policy and Management Act to expressly provide that reinitiation of consultation

under Section 7(a)(2) of the ESA and its related implementing regulation, 50 CFR 402.16, would not be required on approved, amended, or revised U.S. Forest Service (USFS) land management plans or Bureau of Land Management land use plans when new species are listed, new critical habitat is designated, or new information regarding listed species or critical habitat becomes available.

The USDA, Department of the Interior (DOI), and NOAA are committed to continuing to work together towards a legislative solution that allows for timely decision making, while maintaining the important wildlife protections afforded by the Endangered Species Act. As drafted, the Administration has concerns with this section of HR 7408 and looks forward to working with the Committee and the bill sponsor to address concerns with the bill. We want to ensure clarity on how consultation for specific actions or projects facilitates the agencies fulfilling their responsibilities to protect listed species and designated critical habitats while providing the many benefits we gain by managing our forests.

### **Protective Regulations for Threatened Species [Section 601]**

Section 9 of the ESA lists seven specific prohibited actions with respect to endangered species, which include prohibitions on import, export, interstate and foreign commerce, and take of endangered species of fish and wildlife. The Section 9 prohibitions for endangered species do not automatically apply to threatened species.

The ESA recognizes the different status of threatened and endangered species and provides greater flexibility in the conservation and management of threatened species under Section 4(d). NOAA Fisheries has utilized section 4(d) to provide a flexible, targeted approach to the management and conservation of threatened species.

HR 7408 would amend Section 4(d) of the ESA to require that, when a 4(d) rule for a threatened species prohibits an act in Section 9(a) of the ESA, the Services develop incremental recovery goals for that species and provide for the stringency of the regulation to decrease as those recovery goals are met. In addition, under this bill, States could develop a recovery strategy for threatened or candidate species that the Service would adopt as the 4(d) rule within that State if certain criteria are met. These provisions may be difficult to implement because the recovery goals for a threatened species may not be known or may have not been identified at the time of listing the species, and undertaking the activities required by the bill could result in delays in putting protective regulations in place for threatened species. The development of recovery goals and strategies is best done through the development of a recovery plan under Section 4(f) of the ESA. Recovery plans include comprehensive recovery criteria, goals and strategies developed through a collaborative, inclusive process. The additional requirements and the process of reviewing and approving State recovery strategies required by the bill would be a resource-intensive effort that could divert NOAA Fisheries' resources from implementing

conservation actions for the species and delay activities that could prevent a species from declining to the point where the statute requires listing it as endangered. Moreover, the petition process also appears to limit the public's ability to provide substantive input in the informal rulemaking process to adopt a 4(d) rule if a state's petition is approved.

### **IRA Rescissions Impacts to Coastal Communities and NOAA Facilities [Section 701]**

NOAA opposes this provision. At this critical time in our planet's history, HR 7408's rescission of funds allocated in Public Law 117-169 would divest resources from coastal, fishing, and Tribal communities across the nation and jeopardize critical NOAA facilities and infrastructure, affecting U.S. communities' resilience to extreme weather and climate change. Furthermore, NOAA is already actively soliciting contract and grant applications in order to comply with the Public Law 117-169, or the Inflation Reduction Act (IRA).

Coastal communities contribute approximately \$400 billion annually to the U.S. economy and house facilities and infrastructure critical to the U.S. economy and national security, such as ports and military installations.<sup>1</sup> Through the historic funding made available through the IRA, NOAA is supporting community resilience through funding and technical assistance for capacity building, transformational adaptation and resilience planning, conserving and protecting fisheries and other critical resources, supporting Tribal nation priorities, creating high quality climate-ready jobs, and improving delivery of climate services to communities and businesses.

To that end, NOAA is investing \$575 million through the Climate Resilience Regional Challenge (CRRC) to support holistic approaches to building community resilience at the regional scale. These investments are critically needed, as communities across the nation are experiencing increasing impacts from extreme weather and climate change, such as flooding, wildfires, drought, extreme heat, and more. NOAA received nearly 870 letters of intent and more than 33 letters of support from Members of Congress requesting more than \$16 billion in funding through the CRRC program, which amounts to 28 times more in requests than we have in available funding. NOAA is working to meet the needs of communities and build resilience along our nation's coasts; however, the bill's rescission of funds puts the success of these projects (which we expect to announce in the coming months) in peril.

Additionally, NOAA is investing \$349 million to support Climate Ready Fisheries to strengthen the agency's science, management, and survey enterprise to build a dynamically managed fisheries system. As with all of NOAA's plans for IRA funds, this funding has been fully planned and work is underway to execute funds to invest in advanced data technologies and modern infrastructure, to support the critically endangered North Atlantic Right Whale, to implement improvements in recreational fishery surveys for red snapper, among other things. Reversing these plans would threaten NOAA's efforts to provide real-time advice and long-range

projections to inform and support fishery management decisions for affected sectors and communities. In addition, rescissions through the *America's Wildlife Habitat Conservation Act* would impact \$390 million in investments that are directly responsive to priorities identified by Tribes in our March 2023 consultation sessions and written comments. These priorities include support for restoring Pacific salmon and fish passage to help Tribal communities enhance their resilience to impacts from extreme weather and climate change.

NOAA is investing IRA funds to help organizations recruit, train and place workers in climate resilience fields and catalyze public-private partnerships to develop and bring to market the next generation of innovative new products and services to solve challenges related to impacts from extreme weather and climate change. This work will contribute to economic development and growth while developing and growing new businesses and putting Americans to work in high-paying jobs across the country.

Finally, NOAA's facilities portfolio is vast with over 620 facilities, including over 400 owned properties, and an estimated replacement value which exceeds \$3 billion. Each facility requires financial investments for maintenance, repairs, modernization, and even replacement to effectively sustain and evolve NOAA's science capabilities to support current and future missions. Sections 40001 and 40002 of the IRA provide funding for necessary updates to NOAA facilities and infrastructure to continue to operate our science and research missions. The rescission of funds through the *America's Wildlife Habitat Conservation Act* would disrupt the success of NOAA's overarching science priorities and service to the public by canceling investments for the Northwest Fisheries Science Center, fishery survey vessels' mid-life repair, and marine sanctuary facilities across the country.

## **Conclusion**

NOAA is proud to continue to be a leader in conducting ocean science, serving the nation's coastal communities and industries, and ensuring responsible stewardship of our ocean and coastal resources. We value the opportunity to continue working with this Subcommittee on these important issues. NOAA shares and supports many of the goals identified in the legislation, including conserving and restoring species' habitat, recovering listed species and preventing the need to list species under the ESA. However, NOAA opposes the proposed funding offsets and many of the provisions related to ESA implementation.